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SUPERIOR COURT  
YAVAPAI COUNTY, ARIZONA

2010 FEB 25 PM 4:38 ✓

CLERK

BY: B. Hamilton

15 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
16 IN AND FOR THE COUNTY OF YAVAPAI

17 STATE OF ARIZONA

18 Plaintiff,

19 vs.

20 STEVEN CARROLL DEMOCKER,

21 Defendant.

) No. P1300CR20081339

) Division 6

) **DEFENDANT'S MOTION IN**  
) **LIMINE TO EXCLUDE**  
) **EVIDENCE OFFERED IN**  
) **VIOLATION OF ARIZONA**  
) **RULE OF EVIDENCE 403 AND**  
) **404(b)**

) (Evidentiary Hearing and Oral  
) Argument Requested)

22 Pursuant to Rules 15 and 16 of the Arizona Rules of Criminal Procedure, due  
23 process, and the Arizona and U.S. Constitutions, Defendant Steven DeMocker hereby  
24 moves *in limine* for an Order precluding the testimony regarding matters properly  
25 excluded by Rule 403 and 404(b). This Motion is supported by the Due Process and  
26 Eighth Amendment clauses of the United States Constitution and counterparts in the  
27 Arizona Constitution, Arizona Rules of Evidence, Arizona Rules of Criminal Procedure  
28 and the following Memorandum of Points and Authorities.

1                                    **MEMORANDUM OF POINTS AND AUTHORITIES**

2            On December 22, 2009, Mr. DeMocker filed a Motion *in Limine* to Preclude  
3 Prior Act Evidence Pursuant to 404 (b). In Response, the State listed 11 categories of  
4 evidence and asked the Court to determine the admissibility of evidence about those  
5 categories. The Court held hearings during the week of January 12, 2010 on the motion.

6            During those hearings the State represented to the Court that it would not seek to  
7 present evidence regarding allegations that Mr. DeMocker used human growth hormone  
8 or of his clients' alleged dissatisfaction with his handling of their accounts. The State  
9 also represented to the Court that the only allegations regarding Mr. DeMocker's  
10 extramarital affairs that it intended to offer were regarding his relationships with  
11 Barbara Onon and Renee Girard.

12                                    **ARGUMENT**

13            Arizona Rule of Evidence 404(b) provides that prior evidence of other wrongs or  
14 acts is not admissible to prove character to show action in conformity therewith.  
15 Arizona Rule of Evidence 403 provides that relevant evidence may be excluded if its  
16 probative value is substantially outweighed by the danger of unfair prejudice, confusion  
17 of the issues, or misleading the jury, or by consideration of undue delay, waste of time,  
18 or needless presentation of cumulative evidence.

19            The State has not disclosed any prior bad act under Arizona Rule of Criminal  
20 Procedure 15.1(b)7 or made any procedural request as required pursuant to 404(b).  
21 However, in a several hour interview with State's witness Barbara Onon on February  
22 23, 2010, the State spent much of its time inquiring into areas that it either previously  
23 represented to the Court it would not be offering any evidence about or that are  
24 irrelevant or outweighed by 403 considerations.

25            These areas include the following:

- 26            (1) Alleged multiple extramarital relationships;  
27            (2) Alleged human growth hormone use by Mr. DeMocker;

- 1 (3) An allegation made by Ms. Carol Tidmarsh that supposedly occurred in 2006;
- 2 (4) Principal protected versus contingent protected assets and alleged
- 3 representations Mr. DeMocker made to clients about these investments;
- 4 (5) Allegations regarding Mr. DeMocker's business practices;
- 5 (6) Allegations regarding two alleged confrontations between Ms. Onon and Mr.
- 6 DeMocker; and
- 7 (7) Allegations surrounding the process of splitting the business partnership
- 8 between Mr. DeMocker and Ms. Barbara Onon.

9 The alleged extramarital relationships and allegations about the use of human  
10 growth hormone were already the subject of motions before this Court and counsel is  
11 uncertain why the State continues to spend valuable time on these issues in the  
12 remaining weeks before trial given its prior representations to this Court. Any  
13 testimony about these issues should be excluded and the State should be so admonished.

14 The State has not identified Ms. Tidmarsh's allegations as prior bad acts under  
15 Rule 15.1(b)7 or requested a hearing pursuant to Rule 404(b) and Mr. DeMocker  
16 requests that the Court exclude this evidence. Mr. DeMocker's defense has provided the  
17 State with extensive evidence as to the patent unreliability of Ms. Tidmarsh and her  
18 allegations. This allegation relates to an unreported event from 2006, is not relevant to  
19 any issue at trial and should also be excluded under Rule 403 considerations.

20 With respect to the other items, these items have not been identified as prior acts,  
21 are not relevant to any issue at trial and if the Court, over objection determines that they  
22 are relevant, they should be excluded under Rule 403. Ms. Onon's financial and other  
23 motivations as a woman scorned aside, the split of her business relationship with Mr.  
24 DeMocker, which was largely complete as of July 2008, and her disagreements with his  
25 asset management strategies are not relevant to any issue at trial. The State's previous  
26 representations that it would not be offering evidence of allegations of client

1 dissatisfaction with Mr. DeMocker's handling of their accounts cover these areas as  
2 well. The Court should exclude this evidence under either Rule 404(b) or 403.

3 The unreported, unobserved alleged confrontation between Ms. Onon and Mr.  
4 DeMocker should likewise be excluded. This has not been identified as a prior act. Nor  
5 is it relevant or reliable. Ms. Onon never reported these events. No one ever witnessed  
6 these events even though they supposedly occurred at their place of employment. Ms.  
7 Onon continued her romantic relationship with Mr. DeMocker after these events. And  
8 there was no threat or physical contact during these events according to Ms. Onon.  
9 Even if this were determined by the Court to be in some way relevant, the probative  
10 value of these issues is substantially outweighed by the danger of unfair prejudice,  
11 confusion of the issues, or misleading the jury, or by consideration of undue delay,  
12 waste of time, or needless presentation of cumulative evidence. This evidence should  
13 therefore be excluded pursuant to Rule 403.

#### 14 CONCLUSION

15 Yesterday we advised the Court of the grotesque disregard of the rulings of this  
16 Court by the County in producing this week 23,000 pages of new documents. Today we  
17 see more of the strategy underlying this last gasp effort to do all the County can to dirty  
18 up Steve DeMocker. Bring in his former financial account management partner,  
19 Barbara Onon, to claim that Steve was making misrepresentations about the business  
20 investments he was recommending to his clients. This nonsense bears no honest  
21 relationship to the murder charge in this case. The State does not even begin to be able  
22 to say why it is relevant, but they will assure the Court that the proof of these  
23 misrepresentations is right there now in front of us all in the form of tens of thousands  
24 of emails between Steve DeMocker and his clients.

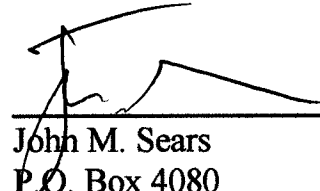
25 And, if that pile is too high, or if when scaled it turns out that there is no proof of  
26 misrepresentation, the State has more. Yes, at the same time that he was dealing with  
27 UBS clients he was having extramarital affairs with his co-worker and with another  
28

1 "Carol," and we should now all look at this dirty aspect of Steve DeMocker's life. The  
2 prosecutor's latter-day desperation in all of this, we guess, should be reassuring. If this  
3 is all they have, and if this is the depth to which they now will dip, maybe we should be  
4 somehow relieved. We are not. The Court should not be either. The State is attempting  
5 to turn this trial into a long-running, character assassination, war—a war in which the  
6 State feels totally free to ignore the rulings of the Court. We spent time months ago  
7 together going through relevant 404(b) issues. The Court heard argument. The Court  
8 ruled. This week, the State completely ignores those rulings as if they never occurred  
9 and invites the witness to speculate that the Defendant was taking HGH and that this  
10 mysterious acronym might hold the key to a change in behavior that could have caused  
11 the Defendant to become violent.

12 We beg the Court to stop this continuing and blatant endeavor. The State may  
13 have no evidence that Steve DeMocker killed Carol Kennedy, but they will if allowed  
14 try to show him to be just the kind of man who could commit a crime like this on the  
15 theory, we guess, that a financial advisor who might lie, and a man who might have  
16 romantic affairs while separated and in the course of a divorce, and a man who might be  
17 prescribed to take a drug for hormone replacement, is exactly the kind of man who  
18 would commit this murder. Rules 403 and 404 are designed to preclude this tawdry  
19 attempt.

20 DATED this 25<sup>th</sup> day of February, 2010.

21  
22 By:

  
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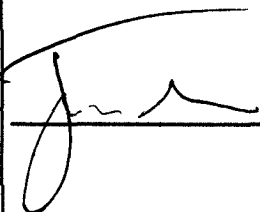
1 **ORIGINAL** of the foregoing filed  
2 This 25<sup>th</sup> day of February, 2010, with:

3 Jeanne Hicks  
4 Clerk of the Court  
5 Yavapai County Superior Court  
6 120 S. Cortez  
7 Prescott, AZ 86303

8 **COPIES** of the foregoing hand delivered  
9 this 25<sup>th</sup> day of February, 2010, to:

10 The Hon. Thomas B. Lindberg  
11 Judge of the Superior Court  
12 Division Six  
13 120 S. Cortez  
14 Prescott, AZ 86303

15 Joseph Butner, Esq.  
16 Office of the Yavapai County Attorney  
17 Prescott courthouse basket

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